UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,530	02/04/2004	Alan Tien	2043.150US1	5406

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EXAMINER
LE, KHANH H

ART UNIT	PAPER NUMBER
3688	

NOTIFICATION DATE	DELIVERY MODE
08/05/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)	
Office Action Summary	10/772,530	TIEN ET AL.	
	Examiner	Art Unit	
	KHANH H. LE	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>04/24/2009</u>.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-22</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-22</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-326 (Rev. 08-06)   **Office Action Summary**   Part of Paper No./Mail Date 20090515

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/24/2009 has been entered.

Claims 1-22 were pending. No claims are added nor cancelled. Thus claims 1-22 are pending. Claims 1, 6-7, 11, 16-17, 21 and 22 are amended. Claims 1, 11, 21, 22 are independent.

Specification

2.   The disclosure is objected to because of the following informalities: at [0087] of the Published Version of the Specification, Figure 18 should be changed to Figure 16. Appropriate correction is required.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4.   **Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed inventions are directed to non-statutory subject matter.**

Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409

U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876)) or (2) transform

underlying subject matter (such as an article or materials) to a different state or thing (see at least

Gottschalk v. Benson, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of

the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for

patent eligible subject matter.

Further, under In re Bilski, 2007-1130, slip op. (Fed. Cir. Oct. 30, 2008), "the machine-

or-transformation test is the only applicable test and must be applied, in light of the guidance

provided by the Supreme Court and this court, when evaluating the patent-eligibility of process

claims." (Id., slip op. at 29).

Here, claim 1 recites:

A method to incentivize a first party to refer a payment service to a
second party, the method including:
<u>*using at least one processor to perform at least some portion of the following actions:*</u>
establishing an account for the second party, wherein the account is associated with one of a
plurality of bonus programs and wherein the account is further associated with the first party;
receiving a payment to the account for the second party; and
automatically awarding a payout to the first party based on the payment to the account for the
second party and on the bonus program that is associated with the account.

Here, a processor is recited (tie to a machine test), however using it to perform "some

portion" of a step is deemed using the processor in insignificant extra activity, that will not

transform an unpatentable principle into a patentable process. (see similar analysis in *Bilski,* slip

op. at 16). In other words, under present understanding of 35 USC 101, the machine's

involvement should be central to the purpose of the claimed method and there should be a nexus

between the machine and the steps so that it is a specific application of the underlying

fundamental principle. Here using a processor to perform "some portion" of a step can be e.g.

using a processor phone to call the bank to inquire about establishing an account by the 2nd party

which is not a specific application of the inventive underlying fundamental principle.

Here, for example, if the central part of the invention is receiving a payment to the account for the second party; and automatically awarding a payout to the first party based on the payment to the account for the second party and on the bonus program that is associated with the account, at least these main steps should be claimed "using a computer" or like language. Likewise, if the main step of the invention is establishing an account for the second party, wherein the account is associated with one of a plurality of bonus programs and wherein the account is further associated with the first party, at least the (implied) associating steps should be claimed as "using a computer" or like language.

Also the claim fails to meet the above 2nd requirement of physically transform underlying subject matter (such as an article or materials) to a different state or thing.

Claims 2-10 suffer from the same defect. (Note: Claim 10 can be interpreted as a tender by electronic payment, which is not a physical transformation nor tied to another statutory class of invention).

Claims 11-20, and 22 are considered statutory because a "server" could be considered a computer per specification at *[0087]*.

5.   *Response to Arguments as to Claim Rejections under 35 USC § 101*

Applicant's arguments filed 04/24/2009 have been fully considered but they are not persuasive. Applicant argues that the claims are statutory citing Abele.

With reference to the claimed invention at issue in In re Abele, the Bilski court --In re Bilski, 545 F.3d 943,954 (Fed. Cir. 2008)--indicated that a broad independent claim reciting a process of graphically displaying variances of data from average values was held unpatentable because the claim did not specify any particular type or nature of data, nor did it specify how or from where the data was obtained or what the data represented. See Bilski, 545 F.3d at 962. In contrast, a dependent claim specifying that the data to be displayed "is X-ray attenuation data produced in a two dimensional field by a computed tomography scanner"5 was held to be drawn

to patent-eligible subject matter because the data clearly represented physical and tangible objects; the transformation of that raw data into a particular visual depiction of a physical object on a display was sufficient to render that more narrowly-claimed process patent-eligible. Bilski, 545 F.3d at 962-63.

Here, a bank account and payout (money not being specifically recited) are not physical objects analogous to the x-rayed body parts of Abele. In other words, there's no materials that a "bank account" or "payout" are made of such that the data is representative of physical objects or substances. Further, the transformation test by name requires "transformation". Applicant's method involves "receiving a payment". There is nothing transformative about merely moving data around (here payment data into bank accounts) just like it is not a physical transformation to move a box around. One does not change the box into a different state or thing by changing its location. The method also involves "awarding a payout". This step could be met by merely sending a payout payment message or sending a payout out and entering it into the account. Again, the step is not transformative. It did not change one set of data into another set as in Abele, i.e. x-ray data into grey scale on a display. It does not recite a transformation of raw data into a particular visual depiction, of a physical object on a display, as required by Abele, or any other analogous depiction (e.g., audio output) that would be cognizable by a human operator. Finally, the method recites "establishing an account. Again this step can be met by just entering a new account number and related data in a database. Again, the step is not transformative: data has not been transformed as in Abele. None of the steps really change the *nature* of the data so that it has a different function or different use as in Abele, not to mention that Abele also requires the transformed data be a particular visual depiction, of a physical object on a display. Thus the claim fails the Bilski transformation test.

The Examiner notes however that the present claims are close to statutory language: there is, properly recited, a machine in the receiving step (although this step may be considered trivial); and if Applicant intended "automatically" (in the step of awarding a payout to the first party based on the payment to the account for the second party and on the bonus program that is

associated with the account) to have any real meaning, then as suggested earlier, reciting
automatically awarding "by a computer" the payout, would make the claim statutory.

Claim Rejections - 35 USC § 112

**6.   Following proper amendment of claims 11 and 22, the previous rejection of
claims 11-20, and 22 under this section is withdrawn.**

<u>35 U.S.C. 112-- six paragraph</u>

7.   Interpretation of claim 22:

Claim 22 recites: *(Currently Amended) A system to incentivize a first party to refer a
payment service to a second party, the system including:*
        <u>a network-based payment machine including at least one server, the at least one server</u>
<u>comprising:</u>
a first means for establishing an account for the second party, wherein the account <u>being</u>
associated with one of a plurality of bonus programs-the account further associated with the
first party;
        a second means for receiving a payment <u>and associating the payment to the account</u> of
the second party and
        a third means for automatically awarding a payout to the first party based on the
payment <u>received by</u> the account and <u>a plurality of payout conditions of</u> the bonus program that
is associated with the account, <u>the plurality of payout conditions including an initial hurdle and</u>
<u>an initial payout.</u>

        **The "means for" in this claim are considered means plus function limitations
invoking 35 U.S.C. 112 six paragraph.** The corresponding structure required are deemed

sufficiently disclosed, to be instructions implicitly stored on at least a server or a single machine
or set of machines, configuring said server(s) or machine(s), as disclosed at paragraphs [0087]-
[0088] of the specification, so that these server(s) or machines can execute the instructions. The
instructions are deemed adequately disclosed at least in Figures 4-6 and associated text, and
paragraphs [0032]-[0034] of the specification.

> *See [0087] FIG. 18 illustrates a diagrammatic representation of machine in the
> exemplary form of a **computer** system 300 within which **a set of instructions**, for
> causing the machine to perform any one or more of the methodologies discussed
> herein, may be executed. In alternative embodiments, the machine operate as a
> standalone device or may be connected (e.g., networked) to other machines. In
> a networked deployment, the machine may operate in the capacity of a **server** or
> a client machine in **server**-client network environment, or as a peer machine in
> a peer-to-peer (or distributed) network environment. The machine may be a
> personal **computer** (PC), a tablet PC, a set-top box (STB), a Personal Digital
> Assistant (PDA), a cellular telephone, a web appliance, a network router,
> switch or bridge, or any machine **capable of executing a set of instructions
> (sequential or otherwise) that specify actions to be taken by that machine**.
> Further, while only a single machine is illustrated, the term "machine" shall
> also be taken to include any collection of machines that individually or
> jointly execute a **set (or multiple sets) of instructions to perform any one or
> more of the methodologies discussed herein.***

> *[0088] The exemplary **computer** system 300 includes a processor 302 (e.g., a
> central processing unit (CPU) a graphics processing unit (GPU) or both), a main
> memory 304 and a static memory 306, which communicate with each other via a bus
> 308. The **computer** system 300 may further include a video display unit 310
> (e.g., a liquid crystal display (LCD) or a cathode ray tube (CRT)). The
> **computer** system 300 also includes an alpha-numeric input device 312 (e.g., a
> keyboard), a cursor control device 314 (e.g., a mouse), a disk drive unit 316,
> a signal generation device 318 (e.g., a speaker) and a network interface device
> 320.*

**Note: If Applicant does not agree that the "means for" in this claim are means plus
function limitations invoking 35 U.S.C. 112 six paragraph, the "means for" language
should be deleted.**

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or
> described as set forth in section 102 of this title, if the differences between the subject
> matter sought to be patented and the prior art are such that the subject matter as a whole
> would have been obvious at the time the invention was made to a person having ordinary
> skill in the art to which said subject matter pertains. Patentability shall not be negatived
> by the manner in which the invention was made.

9.   **Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over
Perri, US 2001/0020231 in view of Nosek US 7191151 and Rowe, US 20020151359.**

Claims 1-3, 8, 11-13, 18, 21, 22:

Perri US 2001/0020231 discloses computer assisted multi-level marketing compensation
method wherein a message is sent from a first party to a second party, wherein the message
includes a link to a processor (at which second party can sign up for a service) and the link has
the first party identifier so the first party can be automatically compensated for specified
activities of the 2nd party (see abstract, [0072], [0077]-[0079]). The referral message can be an
email with links or a link on an ad banner posted on the website of a referring party (Figure 11,
[0077]). Perri discloses the compensation of 1st party is for the 2nd party signing up to open an
account (which can be an affiliate account, a shopping account or other service account, see
[0079]).

Perri discloses the compensation of 1st party is for the 2nd party signing up to open a
account (which can be an affiliate account, a shopping account **or other service account,** see

[0079]) but Perri does not specifically disclose the compensation of 1st party is for the 2nd party signing up to open a payment account.

Claim interpretation:

It is interpreted a payment service is a service which enables buyers and sellers to make and receive payment for transacted merchandise. (Specification at [0002]), such as PayPal (Specification at [0023]).

As stated above commissions for referring a 2nd party to open an account is taught by Perri. The account could be a shopping account **or other service account,** see Perri, [0079]). Activities associated the account earns rewards for the referrer (Perri).

Payment service systems are known before invention time, e.g. Nosek US 7191151 assigned to Paypal discloses such service. Nosek discloses receiving a payment <u>at a network-based payment machine and associating the payment</u> to the account for the second party (the merchant) (see Nosek, abstract).

As any business, payment service businesses need to attract clients, in this case merchants. Thus it would have been obvious to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA") to add the incentives given to referrers of any service, as taught by Perri, to payment service systems such as Nosek, so to incent referrers to make referrals of merchants to sign up for the payment service.

Also, "[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007) at 417 (emphasis added).

The last sentence describes our case. There was, the Court continued, no need for the district court to "seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." Id."

Here a method of compensation for referring clients to a service is taught by Perri. Market forces clearly show that on line payment services, as all businesses, need clients (merchants). As reasoned in KSR, if a technique (here commissions for referrals) has been used to improve a device or process (signing up for a service, as taught in Perri), and a person of ordinary skill in the art would recognize that it would improve similar devices or processes (here a payment service) in the same way, using the technique is obvious unless its actual application is beyond his or her skill." Here simple common sense dictates that the results would be predictable, i.e. that the referrers would be incented to refer the payment service to merchants.

Neither Perri nor Nosek teaches multi level rewards with initial hurdles and payouts, however Rowe, US 20020151359 in a casino player activity scheme, imposes requisites for qualifying for one or more awards. Players activities are tracked and player accounts reflect their activities (abstract). To be eligible for a particular prize a player has to have a certain level of points "(and thus associated play) which may be necessary to qualify for that prize."

(See [0039]:

"*For example, in the event the casino employs a reward program where various prizes are awarded for levels of points (such as a first*
prize for a first minimum number of points, another prize for a higher minimum
number of points, etc.), then information regarding the number of points
necessary for particular plateaus or prizes may be detailed. In this manner, a
player may determine their eligibility for a particular prize, or the level of
additional points (and thus associated play) which may be necessary to qualify
for that prize. "([0039]).

Thus requiring a minimum amount or level of transactions (such as player plays or points in a casino context) (i.e. an " initial hurdle") in order to give out a first prize (i.e. an " initial payout") corresponding to the minimum transaction level (" initial hurdle") is old and well-known, e.g. as taught by Rowe. Thus it would have been obvious to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA") to add to Perri the differential levels of awards based on levels of performance as taught by Rowe, to allow encouraging different levels of performance. In this case, it would also have been obvious to a PHOSITA to add to Perri, the first minimum awards ("initial payout") corresponding to first minimum level of performance (" initial hurdle") as taught by Rowe, to allow giving out the lowest level of reward upon achievement of a minimum performance. One reason for giving out such initial payouts is to set a threshold of performance and rewards, to show a link between performance and rewards, yet to encourage further performance with an initial reward. As stated in KSR, applying the technique of Rowe in the a payment service referrals situation would have been obvious because a person of ordinary skill in the art would recognize that it would improve similar processes (here the payment service) in the same way. Here simple common sense dictates that the results would be predictable, i.e. that the referrers would be incented, just as the players in Rowe, to refer the payment service to merchants.

Perri, in view of Nosek , and Rowe do not disclose a particular bonus program associated with the payment account among plural bonus programs.

However, Warren discloses a website for a potential reward recipients (e.g. account holder) to customize desired rewards features, such as criteria for earning rewards, methods of redeeming rewards, and types of compensation (abstract, [0004],[0047], [0065]). (For example, rewards could be hotel, travel or shopping points, such as United Airlines miles or Marriott points, or cash, or merchandise. Payout conditions may be based on specific performance. Methods of redeeming awards may include automatic redemption at a predetermined event, e.g., a number of points earned, or customer initiated redemption. See [0065]).

Thus it would have been obvious to a PHOSITA to add Warren's teaching of giving a choice of reward plans to the Perri, in view of Nosek, and Rowe system, and give such choice to the Perri's 1st party, to satisfy her.

It would further have been obvious in that case to associate the particular bonus program (for the benefit of the 1st party) with the account of the 2nd party so effect the rewards scheme, i.e. properly pay the 1st party according to her choice of rewards.   It would also have been obvious to associate the 2nd party account identifier and the bonus program identifier to the 1st party identifier (which identifies to 1st party) so that the 1st party can be automatically paid upon the required performance of the 2nd party (as taught by Perri).

Thus Perri, in view of Nosek , Rowe and Warren, as above discussed, disclose:

A system, machine readable medium storing a set of instructions to execute a method to incentivize a first party to refer a payment service to a second party, the method including:
establishing an account for the second party, wherein the account is associated with one of a plurality of bonus programs (interpreted as bonus programs that the 1st party can sign up for) and wherein the account is further associated with the first party;
receiving a payment at a network-based payment machine and associating the payment to the account for the second party (Nosek)
wherein the first party is eligible to participate in a plurality of bonus programs (further in view of Warren).(Note: this is also limitation of claims 8 and 18); and
automatically awarding a payout to the first party based on the payment received by the account for the second party (Perri in view of Nosek) and on a plurality of payout conditions of the bonus program that is associated with the account, the plurality of payout conditions including an initial hurdle and an initial payout (further in view of Rowe and Warren);

wherein the establishing of the account further includes associating a first identifier with the first party (per Perri) and a second identifier with the bonus program (per Warren) wherein the second identifier is utilized to identify the bonus program from the plurality of bonus programs (per Warren).

Claims 4 and 14:

Perri, in view of Nosek , Rowe and Warren disclose a method or system as in Claims 1 and 11 above and Perri discloses communicating the first identifier to the second party via the first party so the 1st party can be paid (i.e. reads on the first identifier is utilized by the second party to establish the account).

However Perri, in view of Nosek , Rowe and Warren do not specifically disclose communicating the second identifier (bonus program ID) to the second party via the first party, wherein the first identifier and the second identifier are utilized by the second party to establish the account.

However, as discussed above, Warren adds to Perri, in view of Nosek , and Rowe, satisfying the 1st party by giving her a choice of reward plans. In that case, it would have been obvious to a PHOSITA that the 2nd identifier for the bonus program also would have to be communicated to 2nd party by 1st party so the second party can submit both identifiers when opening his or her account, so 1st party could be appropriately rewarded under her chosen reward program.

Claims 5-6 and 15-16:

Perri, in view of Nosek, Rowe and Warren disclose a method or system as in Claims 1 and 11 above.

Warren further discloses configuring the plurality of bonus programs (programs), wherein each bonus program includes a plurality of payout conditions ([0065]) wherein the plurality of payout conditions is based on an at least one of an eligible volume, a payout rate, a payout period (Warren at [0065]

discloses automatic redemption at a predetermined event which reads on for example an end of
month thus a monthly payout period), and a maximum payout.

        As discussed above, Warren was added to provide satisfaction to Perri's affiliate with
rewards choices. Further addition of this known redemption method, as taught by Warren, to
Perri, would only yield the predictable result of allowing redemption periodically thus would
have been obvious at invention time.

Claims 7 and 17:

        Perri, in view of Nosek, Rowe and Warren disclose a method or system as in Claims 1
and 11 above. The Perri combination as above discussed, further discloses wherein the payout
includes at least one of an initial payout (when 2nd party opens an account, and the initial hurdle
is met, the 1st party is paid the initial payout).

Claims 9 and 19:

        Perri, in view of Nosek, Rowe and Warren disclose a method or system as in Claims 6
and 16 above. Perri further discloses wherein the plurality of bonus programs include an at least
one of an unrestricted bonus program (Perri does not put restriction on who can join the affiliate
rewards program thus reads on an unrestricted bonus program) and a restricted bonus program.

Claims 10 and 20:

        Perri, in view of Nosek , Rowe and Warren disclose a method or system as in Claims 1
and 11 above.

        Warren further discloses wherein the payout is tendered in at least one of a plurality of
national currencies (this is obvious for Warren's cash reward payments at [0065]). As discussed
above, Warren was added to provide satisfaction to Perri's affiliate with rewards choices. Further
addition of this known redemption method, as taught by Warren, to Perri, would only yield the

predictable result of allowing redemption in cash in the designated currency thus would have
been obvious at invention time.

Response to Arguments

      10.   Applicant's prior art arguments filed 11/12/2008 have been fully considered but
are not persuasive. The above rejection addresses the amended claims.

      It is argued Warren does not teach referral of a payment service and "awarding a payout
to the first party based on the payment to the account for the second party and on a plurality of
payout conditions of the bonus program that is associated with the account, the plurality of
payout conditions including an initial hurdle and an initial payout" as recited in claim 1. Warren
does not have to teach <u>all</u> these limitations since Perri in view of Nosek and Rowe already teach
most of them. Warren as discussed above only adds a plurality of payout conditions options that
the 1st party can choose.

      Other arguments *35 USC § 101 and 112, 2nd paragraph* are addressed under the
appropriate statutory sections above.

Conclusion

      11.   Any inquiry concerning this communication or earlier communications from the
examiner should be directed to KHANH H. LE whose telephone number is 571-272-6721. The
Examiner can normally be reached on Monday-Thursday 9:00-6:00.

      If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's
supervisor, Robert Weinhardt can be reached on 571-272-6633. The fax phone numbers for the
organization where this application or proceeding is assigned are **571-273-8300** for regular
communications and for After Final communications. Any inquiry of a general nature or relating
to the status of this application or proceeding should be directed to the receptionist whose
telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries

must be made to the Customer Service Window (now located at the Randolph Building, 401
Dulany Street, Alexandria, VA 22314).

Information regarding the status of an application may be obtained from the Patent
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like assistance from a USPTO Customer Service Representative or access to the automated
information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 2, 2009
/Khanh H. Le/
Examiner, Art Unit 3688

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